

CIPA and Your Library

Part I – The Law

Suzanne Reymer

sreymer@mtlib.org

Statewide Technology Librarian

Montana State Library



With thanks to:

- ❖ Bob Bocher
- ❖ Karen Schneider
- ❖ Lori Ayre & Infopeople
- ❖ Schools & Libraries Division



For doing all the work to make this
presentation possible



CIPA Compliance – The Basics

- ❖ Law effective on July 1, 2001
- ❖ Applies to **only to K-12 schools and public libraries** using **E-Rate, LSTA or TLCF** for **specific purposes**
- ❖ Filtering needed only for certain visual depictions
 - ❖ Text is not covered
 - ❖ E-Rate funds cannot be used to pay for filters



CIPA – Who Must Comply?

- ❖ K-12 schools and public libraries must meet the law's requirements if they:
 - ❖ Use E-Rate for
 - ❖ **Internal connections**
 - ❖ **Net access** (i.e., ISP costs),
 - ❖ Use TLCF or LSTA for
 - ❖ **PCs to access the Net**
 - ❖ **Net access**, or
- ❖ Are part of a consortium application using any of the above funds for any of the above purposes.



CIPA – Who Must Comply?

- ❖ CIPA and NCIPA requirements do *not apply* if the school or library is using
 - ❖ E-Rate for telecommunications
 - ❖ POTS-Plain Old Telephone Service
 - ❖ DSL, ADSL, T-1, etc. for data uses (must be provided by common carrier)
 - ❖ TLCF or LSTA funds for non-Internet purposes



CIPA –Who Must Comply?

U.S. Supreme Court Decision

- ❖ On June 23, 2003, the Supreme Court ruled 6–3 that the filtering requirement in CIPA is constitutional for public libraries.

This action reversed a 2002 federal district court ruling that had found the filtering mandate unconstitutional on First Amendment grounds.

This decision means that any public library using E-Rate/LSTA funds for purposes outlined above will need to comply with CIPA's filtering requirement.



CIPA – Who Must Comply?

U.S. Supreme Court Decision

- ❖ *Especially because public libraries have traditionally excluded pornographic material from their other collections, Congress could reasonably impose a parallel limitation on its Internet assistance programs.*
As the use of filtering software helps to carry out these programs, it is a permissible condition.
—Supreme Court ruling, June 2003



CIPA Requirements

- ❖ If your school or library uses E-Rate or LSTA for services covered by the law, then you must:
 - 1) Install filters that meet CIPA requirements on all PCs with Net access
 - 2) Develop an Acceptable Use Policy (AUP) that meets CIPA / NCIPA requirements
 - 3) Hold a public hearing on the “proposed” AUP



CIPA – What Must Be Filtered?

- ❖ Must **enforce** the operation of filters* on *any* Net PCs used by staff or patrons (adults or minors)
 - ❖ The filter or blocking technology, referred to in CIPA as a 'technology protection measure,' must protect against access to **visual depictions** that
 1. are obscene (defined in USC),
 2. contain child pornography (defined in USC), or
 3. are harmful to minors (minors only, defined in Act).
- *Known as “technology protection measures” in CIPA



What is Obscene?

- ❖ The Supreme Court declared that obscenity is to be defined within the context of local community standards (*Miller v. California*, 413 U.S. 15, 18 [1973]).
- ❖ While obscenity may be difficult to define, even without CIPA there is no constitutional protection for anyone to view obscene images or child pornography. Yet some Internet content that staff or patrons find sexually explicit will still be protected under the First Amendment.



What is “Harmful to Minors”?

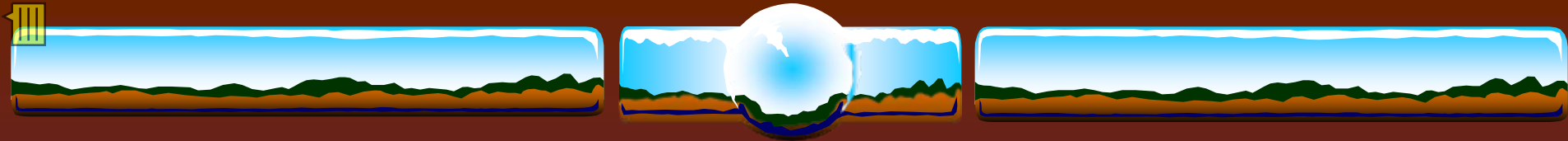
- ❖ Any picture, image, graphic image file, or other visual depiction that;
 - ❖ Taken as a whole and with respect to minors, appeals to a prurient interest in nudity, sex or excretion;
 - ❖ Depicts, describes, or represents, in a patently offensive way with respect to what is suitable for minors, an actual or simulated sexual act or sexual contact, actual or simulated normal or perverted sexual acts, or a lewd exhibition of the genitals; and
 - ❖ Taken as a whole, lacks serious literary, artistic, political, or scientific value as to minors.

Title XVII “Children’s Internet Protection Act”, 2000



When can filters be turned off?

- ❖ Disabling during adult use – E-Rate makes no such provision for minors
 - ❖ An administrator, supervisor, or other person authorized by the library, may disable the filter for adult use for bona fide research or other lawful purposes.
 - ❖ The Supreme Court's plurality opinion and the concurring opinions of Justices Anthony Kennedy and Stephen Breyer place considerable importance on CIPA's unblocking option. For example, Kennedy indicates that if staff refuse to unblock a site or disable the filter when requested by an adult patron, that may place the library at risk of legal action by the patron. This risk is not entirely new. Libraries that filter all Internet workstations and provide no patron recourse to unfilter have faced an increased risk of legal action since the *Mainstream Loudoun* decision (*Mainstream Loudoun v. Bd. of Trustees of the Loudoun County Library*, 24 F. Supp. 2d 552 [E.D. Va. 1998]).



CIPA - Considerations

- ❖ Libraries will need to determine if the federal funding outweighs *all costs* associated with CIPA compliance.
- ❖ Since the Supreme Court's decision was announced, some states have seen more interest in legislative attempts to mandate filters, often tied to use of state technology funds.



CIPA – Acceptable Use Policy

- ❖ E-Rate, LSTA, and TLCHF recipients under CIPA must enforce an AUP that protects against access to visual depictions that are:
 - ❖ Obscene,
 - ❖ Child pornography; or
 - ❖ Harmful to minors (applies to minors only).



CIPA/NCIPA - AUP

- ❖ E-Rate recipients under NCIPA are also required to adopt and implement an AUP to address use of the Net by minors relating to;
 - ❖ Access to inappropriate material (defined by library) or material deemed “harmful” to minors,
 - ❖ Safety and security using email, chat rooms, etc.,
 - ❖ Unauthorized access, including so-called “hacking”,
 - ❖ Unauthorized disclosure, use, and dissemination of Personal Identification Information (PII),
 - ❖ Measures designed to restrict minors’ access to materials harmful to minors.



CIPA/NCIPA - AUP

- ❖ What is “Inappropriate Material”?
- ❖ The determination of what matter is inappropriate for minors shall be made by the school board, local educational agency, library, or other authority responsible for making the determination.

Title XVII “Children’s Internet Protection Act”,
2000



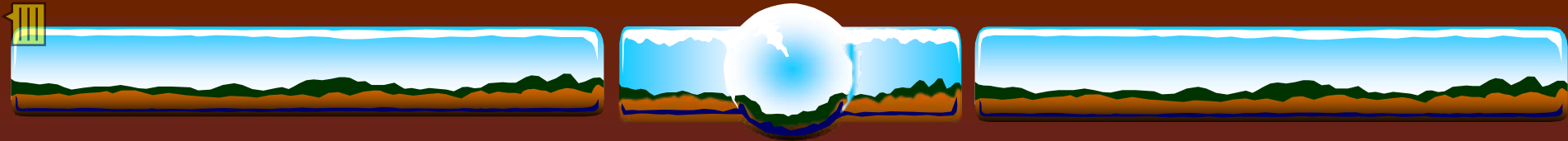
CIPA – Public Hearing

- ❖ Schools and Libraries must hold a public hearing on their CIPA / NCIPA compliant AUP
- ❖ Schools and Libraries shall provide “reasonable public notice” of the hearing
 - ❖ Beyond the public notice, there are **no other specifics** in the law or FCC regulations
- ❖ The hearing can be done as part of a regular board meeting
- ❖ The hearing should follow the state’s open meetings law



CIPA – Undertaking Actions

- ❖ An undertaken action is an action which can be documented and which moves the recipient of service toward compliance.
- ❖ Documentation of undertaken actions must be retained for audit purposes.
- ❖ This is only appropriate for the first year a school or library participates in the E-Rate program.



CIPA – Additional Considerations

- ❖ Do CIPA's requirements reflect your library's mission?
- ❖ Can you comply with CIPA and maintain your library's commitment to intellectual freedom?
- ❖ Consider potential legal liability if your filter is not effective and/or if it cannot be turned off at request of adult patron.



Additional Resources

- ❖ CIPA FAQ by Bob Bocher

<http://dpi.wi.gov/pld/cipafaq.html>

- ❖ E-Rate Central – internet policies, CIPA checklists, filtering vendors, etc.

<http://www.e-ratecentral.com/CIPA/default.asp>

- ❖ American Library Association | CIPA

<http://www.ala.org/ala/washoff/woissues/civilliberties/cipaweb/cipa.cfm>



Additional Resources

❖ CIPA Guidance for Libraries from Schools and Libraries Division

<http://www.universalservice.org/sl/applicants/step10/cipa.aspx>